



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

SPED Hot Topics



Requests for Re-evaluations

In response to inquiries from the field, the Arizona Department of Education/Exceptional Student Services (ADE/ESS) would like to clarify its position on the issue of whether a parental request for a Functional Behavioral Assessment or an assistive technology evaluation, or other assessment that could lead to additions to or modifications of special education and related services, constitutes a request for a reevaluation.

The federal regulations that implement the Individuals with Disabilities Education Act (IDEA) require schools to evaluate children in all areas of suspected disability. [34 C.F.R. § 300.304(c)(4)] The United States Department of Education, Office of Special Education Programs (OSEP) has opined that if a school “does not, as part of its evaluation of the child in all suspected areas of disability, assess the functional capabilities of the child as they relate to the need for assistive technology, the parents have a right to seek at public expense an independent evaluation . . .” [*Letter to Fisher*, 23 IDELR 565, 23 LRP 3411 (OSEP December 4, 1995)] In the same letter, OSEP goes on to say, “[i]n addition to their right to an IEE, the parents also have the option to ask the public agency to conduct a re-evaluation that assesses the child’s functional capabilities as they relate to the need for assistive technology.” [*Id.*] Along those same lines, OSEP recently stated, “If [a functional behavioral assessment or FBA] is being conducted for the purpose of determining whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child’s IEP goals/objectives, or to determine whether the behavioral component of the child’s IEP would need to be revised, we believe that the FBA would be considered a re-evaluation under Part B for which parental consent would be required under 34 C.F.R. § 300.300(c).” [*Letter to Christiansen*, 48 IDELR 161, 107 LRP 45740 (OSEP February 9, 2007)]

Based upon the above OSEP letters, ADE/ESS concludes that if a parent requests in writing a FBA, assistive technology assessment, or the like, such request shall be treated as a request for a reevaluation. The Arizona State Board of Education rules provide that, “the initial evaluation of a child being considered for special education, **or the re-evaluation per a parental request of a student already receiving special education services**, shall be completed as soon as possible, but shall not exceed 60 calendar days from receipt of informed written consent.” [A.A.C. R7-2-401(E)(3)] (Emphasis added) This 60 day timeframe may be extended for an additional 30 days if the parent and the school agree in writing, and provided it is in the child’s best interest. [A.A.C. R7-2-401(E)(4)] The State Board of Education rules further clarify that if the parent requests the evaluation, the 60 day timeline begins to run the date the public education agency receives the parent’s written request for the evaluation in question. [A.A.C. R7-2-401(E)(3)] The 60 day timeline ends with the team’s determination regarding the child’s need for that particular service, unless the public education agency has refused to conduct the evaluation and so documented in a prior written notice.

Questions have arisen about whether treating a FBA, AT evaluation, or the like as a reevaluation means that eligibility must be redetermined. It is ADE/ESS’s position that the answer to that question is no. The comments to the federal regulations state that:

Section 300.305(a)(2), consistent with section 614(c)(1)(B) of the Act, states that one of the purposes of a reevaluation is to determine the educational needs of the child, including whether any additions or modifications to the special education and related services are needed to enable the child to meet the child’s IEP goals and to participate in the general education curriculum. Thus, if a reevaluation is requested to determine the child’s educational needs when the child’s continued eligibility is not in question, the public agency must either conduct the reevaluation or provide notice to the parents as to why the public agency believes a reevaluation is unnecessary. [34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart A – General, *Federal Register*, p. 46643-46644]

Therefore, a reevaluation conducted to determine if the child requires additional services, or modifications to existing services, does not require a decision regarding the child’s continued eligibility.

If you have questions, you may contact your assigned education program specialist.